

State of Florida

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



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Public Service Commission

EX PARTE OR LATE FILED

September 18, 1996

BY FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FCC MAIL ROOM

Re: EX PARTE FILING - CC Docket No. 96-150 - Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996.

Dear Mr. Caton:

Pursuant to Rule 1.1206, two copies of our written ex parte presentation, filed this same day, are submitted to you under separate cover for inclusion in the public record. The Florida Public Service Commission met at a public and noticed meeting September 16 to address these comments. Thus, they are being filed a few days after the deadline noticed in the Notice of Proposed Rulemaking.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia B. Miller".

Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

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Re: CC Docket No. 96-150 - Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996.
(Ex Parte Filing)

Dear Mr. Caton:

Enclosed are the original and twelve copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also forwarding a hard copy, plus diskette, of our comments to Ernestine Creech of the Common Carrier Bureau.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia B. Miller".

Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)

Implementation of the)
Telecommunications Act of 1996:)

Accounting Safeguards Under the)
Telecommunications Act of 1996)
_____)

CC Docket No. 96-150
(Ex Parte Filing)

**RECEIVED
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**SUMMARY OF REPLY COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

On August 23, 1996, the FPSC filed its comments with the FCC regarding the NPRM on Accounting Safeguards. In the comments we stated that States should be allowed to establish non-accounting and accounting safeguards beyond those established by the FCC. In addition, we expressed our support for the Resolution adopted by the NARUC on July 25, 1996, which proposes certain guidelines regarding the joint federal/state audit required by section 272 and also outlines the role NARUC believes the State commissions and the FCC have in the audit process.

These are the FPSC's reply comments to the same NPRM. In summary, there are three main topics addressed by the commenting parties on which we are presenting our views here. The first is the valuation of affiliate transactions. We believe that, for FCC purposes, affiliate transactions involving assets or services should be valued at the tarified rate or either the higher of fair market value or fully distributed costs when the seller is the BOC, and at the lower of fair market value or fully distributed costs when the purchaser is the BOC. In addition, a uniform rate of

return, for FCC purposes, should be used to determine the value of the transaction, and for the BOC imputed access charges, there should be a price floor/minimum threshold which should be equal to the amount of the access charge plus the incremental cost of the non-access portions of the service.

Second is the topic of the system of accounts that affiliates should use. To facilitate auditing of the affiliated transactions, we believe that each BOC affiliate should be required to either use the USOA for accounting purposes or to provide an account mapping reconciling the account systems of the BOC and the affiliate.

The third and final topic is the application of joint cost allocation rules to price cap companies. The FPSC believes that the FCC should not forbear from applying Joint Cost Rules to all LECs, for FCC purposes, regardless of whether they are "sharing" or "no-sharing" price cap companies.

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_____)

CC Docket No. 96-150
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REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

Introduction

On July 18, 1996, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) regarding Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 in Docket No. 96-150. On August 23, 1996, the Florida Public Service Commission (FPSC) filed comments in response to that NPRM. These are the FPSC's reply comments in that Docket.

In the FPSC comments, we stated that States should be allowed to establish non-accounting and accounting safeguards beyond those established by the FCC. We believe that there may be State specific cross subsidy or competitive concerns that do not lend themselves to a nationally prescribed solution. Finally, we expressed our support for the Resolution adopted by NARUC on July 25, 1996, which proposes certain guidelines regarding the joint federal/state audit required by section 272 and also outlines the role NARUC believes the State commissions and the FCC have in the audit process.

Among the comments issued by other parties in response to this NPRM, there are three major topics of discussion which we believe are important. First is the subject of the valuation of affiliated transactions. Second is the system of accounts that the affiliates should be required to follow. Third is the application of joint cost allocation rules to price cap companies. The following are our views on these issues.

Affiliate Transactions Valuation

The first is the subject of the valuation of transactions between the Bell Operating Company (BOC) and its affiliate. Many commenting parties supported the continued use of the prevailing price methodology for valuing affiliate transactions. The FPSC believes that, for FCC purposes, the continued use of the prevailing price methodology is inconsistent with the intent of Section 272 to ensure that all affiliate transactions are negotiated "on an arm's length basis."¹ It is difficult for companies to determine, and for regulators to assess, what percentage of a company's "overall business must be provided to non-affiliates in order to establish a prevailing company price."²

¹ §272(b)(5).

² NPRM, Docket No. 96-150, ¶81, pp. 39-40.

Reply Comments of the Florida Public Service Commission
CC Docket No. 96-150

Therefore, we agree with the FCC's suggestion to amend the affiliate transaction rules, for FCC purposes, so that "transactions from the carrier to the non-regulated affiliate would be recorded at tariffed rates, if applicable, or at the higher of fair market value or fully distributed cost. Transactions from the non-regulated affiliate to the carrier would be recorded at the lower of fully distributed cost or fair market value."³

We believe, as the FCC does, that, for FCC purposes, "the procedures carriers use in estimating fair market value should vary with the circumstances of the transaction and consequently that we should not specify the methodologies that carriers must follow to estimate fair market value."⁴ However, we also believe as AT&T does, that the FCC "should establish criteria for such valuations along the lines suggested in paragraphs 84-85 of the NPRM."⁵ Whatever method the BOC or its affiliate chooses to use for determining fair market value should be made in good faith and should be documented for Section 272 auditing purposes.

In addition, the FPSC agrees that it is impractical to prescribe multiple rates of return. In the NPRM, the FCC stated

³ NPRM, Docket No. 96-150, ¶82, p.40.

⁴ NPRM, Docket No. 96-150, ¶83, pp. 40-41.

⁵ Comments of AT&T, CC Docket No. 96-150, pp. 15-16.

Reply Comments of the Florida Public Service Commission
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that it believes it "should consider allowing all carriers providing directly, or indirectly through an affiliate, the services that are subject to Section 272 to use a uniform rate of return to value affiliate transactions."⁶ We suggest that, for their purposes, the FCC evaluate the use of an indexed rate of return. For instance, the return on equity component could be set by identifying a risk premium which would then be added to the US Treasury Bond yield (a risk-free rate) to develop the rate of return for carriers to apply. Whatever rate is applied, it should be updated annually. We believe that this approach is administratively efficient and is also reflective of current market conditions.

Finally, each BOC is required to "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."⁷ We support AT&T's position, for FCC purposes, that "to implement this requirement and to ensure compliance with the BOC's nondiscrimination obligations, the Commission should establish price floors at a level at least

⁶ NPRM, Docket No. 96-150, ¶87, p. 42.

⁷ §272(e)(3).

equal to the amount of the access charge plus the incremental cost of the non-access portions of the service."⁸

Affiliate System of Accounts

The second topic is that of the system of accounts that the affiliate should follow. The FPSC believes that if fully distributed costs are used for recording transactions, the affiliate should be required to use the FCC prescribed Uniform System of Accounts (USOA). Further, the affiliate should be classified as either a Class A or a Class B company for accounting purposes. Per 47 CFR Chapter 1, §32.11(a), the designation is assigned based upon the size of the company, in revenues, with Class A companies having \$100 million or more in annual revenues. The FPSC believes that the same distinctions are appropriate for BOC affiliates because it would create less of a burden for the smaller affiliates.

In the event the USOA is found cost prohibitive, an account mapping that would link an affiliate's account structure with USOA accounts, should be required. We do not expect the affiliate's use of the USOA to be cost prohibitive since the FCC has, for the most part, brought the USOA in line with Generally Accepted Accounting

⁸ Comments of AT&T, Docket No. 96-150, p. 19.

Principles. The USOA has been simplified in recent years in areas such as record retention requirements. The FPSC believes that use of the USOA will facilitate auditing. Without the USOA, it would be extremely difficult, if not impossible, to evaluate the reasonableness of an affiliate's fully distributed costs.

Application to Price Cap Companies

The third and final topic is that of the application of joint cost allocation rules to price cap companies. The FPSC disagrees with Ameritech's views that "continued application of Part 64 of the Commission's rules to pure price cap carriers is unnecessary."⁹ It is the opinion of the FPSC, that, for FCC purposes, joint cost allocation rules are necessary for all local exchange companies (LECs) including "no-sharing" price cap companies. State and Federal regulators must have access to actual cost figures for no-sharing companies to ensure against anti-competitive behavior. If the need arises, regulators must have access to timely and sufficient data to determine whether anti-competitive behavior exists. Actual costs are also necessary for interconnection proceedings and for the determination of Universal Service Fund collections and distributions. In addition, while there may be a

⁹ Comments of Ameritech, CC Docket No. 96-150, p.4.

Reply Comments of the Florida Public Service Commission
CC Docket No. 96-150

reduced need for joint cost allocation rules for some companies on the national level, there are still many reasons for the rules for the same companies on the state level. Companies may be no-sharing on the federal level but are still "sharing" on a state level and therefore, will still require adequate cost allocation for proper determination of actual costs. For each of these reasons individually and collectively, the FCC should not forbear from applying the Joint Cost Rules to all LECs.

Summary

In summary, we believe that, for FCC purposes, affiliate transactions involving assets or services should be valued at the tariffed rate or either the higher of fair market value or fully distributed costs when the seller is the BOC, and the lower of fair market value or fully distributed costs when the purchaser is the BOC. In determining the value of affiliate transactions, a uniform rate of return should be used, for FCC purposes. Further, we believe that, for the BOC imputed access charges, there should be a price floor/minimum threshold which should be equal to the amount of the access charge plus the incremental cost of the non-access portions of the service. Next, we believe the BOC affiliate should be required to either use the USOA for accounting purposes or to

Reply Comments of the Florida Public Service Commission
CC Docket No. 96-150

provide an account mapping reconciling the account systems of the BOC and its affiliate. Finally, the FPSC believes that the FCC should not forbear from applying Joint Cost Rules to all LECs, for FCC purposes, regardless of whether they are sharing or no-sharing price cap companies.

Respectfully submitted,


CYNTHIA B. MILLER
Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION
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DATED: September 18, 1996

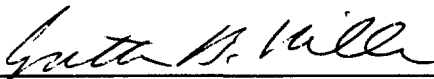
Reply Comments of the Florida Public Service Commission
CC Docket No. 96-150

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Telecommunications Act of 1996:)	(Ex Parte Filing)
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Accounting Safeguards Under the)	
Telecommunications Act of 1996)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Reply Comments of the Florida Public Service Commission has been
furnished to the parties on the attached list, this 18 day of
September, 1996.



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